

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7628

Joint Petition of Green Mountain Power Corporation,     )  
Vermont Electric Cooperative, Inc., and Vermont     )  
Electric Power Company, Inc. for a certificate of public     )  
good, pursuant to 30 V.S.A. Section 248, to construct up     )  
to a 63 MW wind electric generation facility and     )  
associated facilities on Lowell Mountain in Lowell,     )  
Vermont, and the installation or upgrade of     )  
approximately 16.9 miles of transmission line and     )  
associated substations in Lowell, Westfield and Jay,     )  
Vermont     )

Order entered: 12/23/2011

**ORDER RE HABITAT FRAGMENTATION-CONNECTIVITY EASEMENTS**

**INTRODUCTION**

On May 31, 2011, the Public Service Board ("Board") issued an Order (the "Order") and Certificate of Public Good ("CPG") in this docket approving, subject to certain conditions, the construction and operation of the proposed wind electric generating facility. Among other things, the Order required the Petitioners to make a number of post-certification compliance filings. On December 7, 2011, Green Mountain Power Corporation ("GMP") submitted its proposed habitat fragmentation-connectivity easements ("Easements") covering two parcels of land totaling approximately 1,662 acres for party comment and Board review. For the reasons set forth below, in this Order we approve the proposed Easements and direct GMP to file a map showing the location and property boundaries of the conserved parcels.

### DISCUSSION

Condition 17 of the CPG, as revised by our Order of July 12, 2011,<sup>1</sup> states:

GMP shall secure prudent fragmentation-connectivity easements of adequate size and location, pursuant to the requirements of paragraph 3.2 of the Natural Resource MOU, and file them for Board approval. Parties with standing on the issue shall have two weeks to file comments from the time any easements are filed. The easements must be approved, executed, and conveyed by December 31, 2011. If GMP has not met this requirement by December 31, 2011, GMP shall cease all construction activities until such time as the fragmentation-connectivity easements are approved, executed, and conveyed.

In its December 7, 2011, filing, GMP included executed copies of the Easements. The Easements cover two parcels of land, one approximately 948.7 acres and the other approximately 714.08 acres, for a total conserved acreage of approximately 1,662 acres. The Easements convey to the Vermont Land Trust, Inc. in perpetuity the development rights and a conservation easement and restrictions on the two parcels, all as described in the Easements.

The primary purpose of the Easements is to "conserve and protect ecological and landscape connectivity between the Lowell Mountain and Green River reservoir habitat blocks, important wildlife habitat and natural communities on the Protected Property, and natural resource values as these values exist on the date of this instrument and as they may evolve in the future."<sup>2</sup> Subject to management practices consistent with the primary purpose of the Easements, the secondary purpose is to maintain sustainable production of forestry resources.<sup>3</sup> Other objectives of the Easements include sustainable management of soil resources, conservation of scenic and natural resources associated with the two parcels, improving the quality of life for Vermonters, and maintaining the essential characteristics of the Vermont countryside for the benefit of future generations.<sup>4</sup>

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1. Condition 17 originally required GMP to secure the Easements prior to commencing construction. However, in response to a Motion for Reconsideration filed by GMP, we determined it was appropriate to move the deadline for obtaining the Easements to December 31, 2011, in order to avoid unanticipated delays in constructing the project, and creating the potential for loss of federal Production Tax Credits. Docket 7628, Order of 7/12/11 at 8-11.

2. Easements at ¶ 1.

3. Easements at ¶ 2.

4. Easements at ¶ 2.a.

The Easements seek to achieve their purposes by placing significant restrictions on the use and development of the subject properties, while continuing to allow specified activities not in conflict with those purposes.<sup>5</sup>

On December 21, 2011, the Towns of Albany and Craftsbury (the "Towns") filed comments on the Easements. The Towns argue that it is not possible to ascertain from the materials provided by GMP whether the Easements are sufficient to comply with Condition 17. More particularly, the Towns contend that no expert opinion has been rendered on whether the Easements satisfy Condition 17, either from an Agency of Natural Resources ("ANR") witness or a GMP witness. The Towns claim that this lack of expert opinion makes it impossible to judge the adequacy of the Easements.<sup>6</sup> The Towns further argue that the lack of a map showing the location of the two parcels makes it impossible to tell if they actually provide connectivity between habitat blocks.<sup>7</sup> The Towns also point to a number of documents referenced in the Easements and assert that those documents should have been provided at the time the Easements were filed.<sup>8</sup> The Towns also express concerns that the cumulative impacts of the permitted uses on the parcels may degrade any connectivity value they have, and that the allowance of maple sugaring operations, which may include the use of tubes for sap collection, may impede the movement of animals through the parcels.<sup>9</sup> The Towns ask that information addressing all the concerns raised in their comments be submitted in the form of sworn testimony, and that the parties be given a period of two weeks to review and respond to that information, including the opportunity to request additional hearings at that time. The Towns also assert that GMP should cease construction as of December 31, 2011, per Condition 17 until their recommended review process is completed.<sup>10</sup>

Also on December 21, 2011, the ANR filed comments on the Easements. ANR's comments consisted of a cover letter from counsel, and a memorandum drafted by two of ANR's

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5. *See*, Easements, generally.

6. Towns' Comments at 1-2.

7. Towns' Comments at 2-3.

8. Towns' Comments at 3.

9. Towns' Comments at 4.

10. Towns' Comments at 3, 5.

natural resource witnesses in this proceeding, John Austin and Eric Sorenson. According to ANR, the two conserved parcels represent its "first choice to address the fragmentation impacts of the project"<sup>11</sup> and constitute the "most important that we could identify for maintaining ecological connectivity between the Lowell Mountain habitat block (29,683 acres) and Green River Reservoir habitat block (21,583 acres)."<sup>12</sup> According to ANR, the northern of the two parcels abuts the conserved Atlas Timberlands parcel and the southern parcel abuts Green River Reservoir State Park and they include the Boomhour Branch stream valley, a useful wildlife corridor. The two parcels also include approximately 3,000 feet of frontage on both sides of East Hill Road where no new residential development will occur, which will best allow for continued wildlife movement.<sup>13</sup> It is the opinion of ANR's experts that the Easements will "maintain the forested landscape and preclude residential development and thereby help to maintain the level of ecological and landscape connectivity that currently exists between these two large habitat blocks."<sup>14</sup> ANR's experts conclude that the Easements are of adequate size and location and satisfy Condition 17 of the CPG.<sup>15</sup>

We approve the Easements and find that they satisfy Condition 17 of the CPG, based in large part on the information provided by ANR's experts.<sup>16</sup> We do, however, require GMP to file a map showing the location and boundaries of the conserved parcels.

Condition 17 required GMP to obtain "prudent fragmentation-connectivity easements of adequate size and location, pursuant to the requirements of paragraph 3.2 of the Natural Resource MOU, and file them for Board approval."<sup>17</sup> Paragraph 3.2 of the Natural Resource MOU<sup>18</sup>

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11. ANR letter at 1.

12. ANR Memo at 2.

13. ANR Memo at 2.

14. ANR Memo at 2.

15. ANR Memo at 2.

16. It is not unusual for the Board to rely on expert reports in assessing compliance with conditions of approval during post-certification reviews as it does today. Provided the reports contain the analyses and opinions of qualified experts there is nothing objectionable about the Board relying on them in reaching its conclusions in post-certification proceedings in the absence of an issue warranting additional hearings or other process. *See, e.g., Amended Petition of Vermont Wind, LLC*, Docket 7156, Order of 3/24/09 at 7-8.

17. Docket 7628, Order of 7/12/11 at 11.

18. The Natural Resource MOU is a stipulation between GMP and ANR dated 2/23/11 which addresses, among other things, the project's habitat fragmentation impacts. It was entered into evidence as exhibit GMP-ANR-1.

requires GMP to "consult with and obtain the approval of ANR for any parcel it seeks to secure to satisfy" its obligation to obtain the easements required by that paragraph. Paragraph 3.2 also provides that ANR shall determine the adequacy of any proposed easements.<sup>19</sup> The terms of paragraph 3.2 were approved by the Board, subject to the additional requirement that the Easements be filed with the Board for party comment and Board review and approval.<sup>20</sup>

ANR, consistent with the terms of paragraph 3.2 of the Natural Resource MOU, has reviewed the size and location of the parcels and determined they are adequate, and actually represent the two most important parcels to be obtained for maintaining connectivity between the Lowell Mountain habitat block and the Green River reservoir habitat block. ANR has also concluded that the conservation requirements of the Easements are sufficient to assist in maintaining the level of ecological and landscape diversity that currently exists between the two habitat blocks. Based on ANR's analysis, we are satisfied that the Easements meet the requirements of Condition 17. However, GMP must file a map showing the location and property boundaries of the two conserved parcels. If the map indicates any inconsistencies with the description and representations in ANR's comments, we will be prepared to revisit this issue, including the potential for an order directing GMP to cease construction pending resolution of any issues that are identified.

We do not agree with the Towns that any additional process is warranted. ANR has reviewed and approved the parcels and the terms and conditions of the Easements and concluded that they meet the requirements of paragraph 3.2 of the Natural Resource MOU. The Easements were filed with the Board and parties were given a two-week period to comment. Accordingly, the requirements of Condition 17 have been met.

### CONCLUSION

The proposed Easements are approved and GMP may continue construction beyond December 31, 2011. Within 7 calendar days of this Order, GMP shall file a map showing the

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19. Exh. GMP-ANR-1 at ¶ 3.2.

20. Docket 7628, Order of 7/12/11 at 11.

locations and property boundaries of the two conserved parcels. Parties with standing on this issue may submit comments on the map within seven calendar days of its filing.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 23<sup>rd</sup> day of December, 2011.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: December 23, 2011

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*